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BUREAU OF
CONSULAR AFFAIRS

December 12, 2003

via email: adoptionregs@state.gov

via USPS

U.S. Department of State

CA/OCS/PR1

Adoption Regulations

Docket Room, SA-29

2201 C Street, N.W.

Washington D.C. 20520

RE: State/AR-01/96

Comments on Proposed Regulations to Implement the Hague
Convention & IAA

To Whom It May Concern:

Please accept these comments on behalf of Heartsent Adoptions, Inc., 15 Altarinda Road, Orinda, CA 94563, December 12, 2003, phone (925) 254-8883, fax (925) 254-8866. These comments are in addition to the comments submitted by the Joint Council on International Children Services, with which Heartsent concurs and incorporates herein.

Heartsent is a non-profit organization formed in 1995 from a desire to provide prospective adoptive parents with a child to love. We believe that the process by which these families find each other should be supportive, educational and kind. The individuals who first conceived of Heartsent Adoptions, Inc. are adoptive parents of foreign born children themselves, as are the members of the Board of Directors. Heartsent is composed of interested and informed individuals ready to serve the needs of those who wish to investigate international adoption as a means to start their own family. It is Heartsent's commitment to each prospective parent to provide services in accordance with all laws and regulations relative to international adoptions.

Certain regulations proposed to implement the 1993 Hague Convention on

Protection of Children and Co-operation in Respect of Intercountry Adoption and the International Adoption Act of 2000 will severely impair, if not destroy, Heartsent's ability to provide international adoption services. In addition to the reasons stated in prior comments, proposed sections 96.45(c)(1) and 96.46(c)(1) exceed the statutory authority. (*Sheyko v. Saenz* (2003) 112 Cal.App.4th 675; *Olszewski v. Scripps* (2003) 30 Cal.4th 798; *Landgate, Inc. v. California Coastal Com'n* (1998) 17 Cal.4th 1006.) There is nothing in the Convention that imposes strict liability on the primary provider, i.e., United States adoption agency. Likewise, there is nothing in the IAA that does the same. The regulations as proposed would be invalid.¹

For these reasons as well as all others submitted, sections 96.45(c)(1) and 96.46(c)(1), as written, should be stricken from the proposed regulations. Thank you for your attention to this matter.

Very truly yours,

Rose M. Zoia

cc: Heartsent Adoptions, Inc.
Joint Council on International Children Services
The Honorable Joseph Biden
The Honorable Dave Camp
The Honorable Hillary Rodham Clinton
The Honorable William Delahunt
The Honorable Diane Feinstein
The Honorable Edward Kennedy
The Honorable Mary Landrieu
The Honorable Lamar Smith

¹ The indemnification provisions in subdivisions (d) of these sections do little to solve the problems caused by subdivisions (e). For the same reasons it may be difficult if not impossible for individuals to seek damages from a foreign entity, it is difficult if not impossible for adoption agencies to do the same.